

S.F.D.H. Associates, L.P. d/b/a Sir Francis Drake Hotel and Hotel Employees and Restaurant Employees Union, Local 2, AFL-CIO and Service Employees International Union, Local 14, AFL-CIO, Joint Petitioners. Case 20-RC-17317

February 14, 2000

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered the Employer's objection to an election held on November 19, 1997, and the hearing officer's report recommending that the objection be overruled. The election was conducted pursuant to a Decision and Direction of Election. The tally of ballots shows 64 for and 28 against the Joint Petitioners, with 6 challenged ballots, an insufficient number to affect the results.

The Employer filed exceptions to the hearing officer's report and a supporting brief and the Joint Petitioners filed a brief in opposition to the Employer's exceptions. The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings¹ and recommendations, and finds that a certification of representative should issue.

In its exceptions, the Employer contends, inter alia, that the repeated contacts of the Petitioners' observer with employees in the polling area in complete disregard of the Board agent's admonitions constituted objectionable conduct. Contrary to our dissenting colleague, we find no merit in this contention.

It is undisputed that the Petitioners' observer Jose Lee spoke to a total of 5 or 6 voters of the approximately 100 voters in the polling area during the election, which was conducted in three separate periods over the course of a day. It is also undisputed that all of these conversations were brief, lasting from a few seconds to 1 minute. Further, the record evidence establishes that the content of these conversations was innocuous.

The record does not show that any voters were present when the Board agent initially instructed the election observers to forbear speaking with voters. Similarly, there is no showing that any voters heard the Board agent admonish Lee between sessions for his brief interjections of a few words during the second voting session. At most, according to the Employer's witness, five voters

may have heard the Board agent admonish Lee after he replied to a question from employee Maria Paredas.

Under these circumstances, we find that the mere fact that Lee "disregarded" the Board agent's admonitions not to talk to voters in no way suggested to voters that it was the Petitioners and not the Board that were conducting the election. For that reason, and in light of the Petitioners' large margin of victory, we agree with the hearing officer that Lee's brief remarks to five or six voters could not have affected the results of the election and are not sufficient grounds for setting it aside.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for the Joint Petitioners, Hotel Employees and Restaurant Employees Union, Local 2, AFL-CIO and Service Employees International Union, Local 14, AFL-CIO, and that they are the exclusive collective-bargaining representatives of the employees in the following appropriate unit:

All full-time and regular part-time front desk agents, bell captains, bell persons, door persons, PBX operators, room attendant supervisors, room attendants, house persons, and special project house persons employed by the Employer at its San Francisco, California location; excluding all other employees, office clerical employees, confidential employees, managerial employees, engineering employees and supervisors as defined in the Act.

MEMBER HURTGEN, dissenting.

Unlike my colleagues, I would set aside the election. The observers at this election were instructed by the Board agent not to speak with employees in the voting area. The hearing officer found that the Petitioners' observer, Jose Lee, who is fluent in Spanish and English, spoke to employees in Spanish at least five times during the course of the election. The Board agent, who does not speak Spanish, admonished Lee each time he spoke with voters. Lee ignored the Board agent's instructions all five times.

Lee's repeated defiance of the Board agent's instructions amounts to no less than an open flaunting of the Board agent's authority to conduct the election. In my view, NLRB elections are among the crown jewels of this nation's practice of industrial democracy. The presence of dedicated and experienced Board-agents at these elections is an essential element of that electoral process. If these Board agents cannot effectively control that process, the entire system is in jeopardy.

My colleagues rely on the allegedly "innocuous" content of the conversations (left unresolved by the hearing officer) and the assertedly small number of voters who may have overheard the Board agent's instructions or witnessed the observer's defiance of them. My colleagues have thereby missed my point. At issue here is

¹ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

the protection of the integrity of the Board's election processes. The Board simply cannot permit the flaunting of the Board agent's valid instructions, irrespective of the precise number of employees who are aware of such flaunting.

Accordingly, I would not permit a party, through its agent, to repeatedly flaunt the admonitions of a Board agent. Thus, for the sake of the integrity of the electoral system, I would sustain the objections in this case.